

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MATTHEW LAUZON.

Plaintiff

vs.

STEPHEN DODD,
ROGER BEAUPRE, and
CITY OF BIDDEFORD

Defendants

DOCKET NO: CV-16-

NOTICE OF REMOVAL

Defendants Roger Beaupre and City of Biddeford (“City Defendants”) hereby give notice, pursuant to 28 U.S.C. §§ 1441 and 1446, of the removal of the following civil action:

Matthew Lauzon v. Stephen Dodd, et al., Maine Superior Court, Civil Action No. CV-15-239.

As grounds therefore, Defendants respectfully state as follows:

1. Matthew Lauzon (“Plaintiff”) commenced this action by filing a complaint in the Maine Superior Court, York County, Civil Docket No. 15-239 on October 29, 2015.
2. Counts I, II and III of Plaintiff’s four count Complaint against Defendants are for alleged violations of 42 U.S.C. § 1983. *See* Complaint, attached as Exhibit 1. Count IV alleges “negligent supervision” concerning the same conduct complained of in Counts I-III resulting in a cause of action that is “so related ... that [it] form[s] part of the same case or controversy ...” 28 U.S.C. § 1367(a).
3. The United States Circuit Court of Appeals for the First Circuit has held that “[a]lmost by definition, a claim under § 1983 arises under federal law and will support federal-question

jurisdiction [under § 1331].” *Alberto San, Inc. v. Consejo De Titulares Del Condominio San Alberto*, 522 F.3d 1, 3 (1st Cir. 2008) (emphasis added and alterations omitted.)

4. This civil action is one which the United States District Court has original jurisdiction under the federal question provisions of 28 U.S.C. § 1331 and the supplemental jurisdiction under 28 U.S.C. § 1367.

5. This action is removable pursuant of 28 U.S.C. § 1441.

6. The United States District Court for the District of Maine in Portland encompasses the district and venue within which this action is currently pending in state court. As for the filing of this matter, pursuant to Local Rule 3(b), the case has arisen out of York County, and the Defendants reside in York County. As a result, this notice of removal is being filed in Portland.

7. Copies of all pleadings filed in the Maine Superior Court, York County, received by Defendants by obtaining a copy of the filings, are attached hereto as Exhibit 2 and are by reference made a part of this Notice of Removal in accordance with 28 U.S.C. § 1446(a).

8. All Defendants served to date, namely, City of Biddeford and Roger Beaupre, join in and consent to the removal of this action.

9. Defendant Stephen Dodd has not been served in this action, as demonstrated by the following pleadings:

Defendant Dodd’s Motion to Dismiss, dated January 13, 2016, on the basis of the failure of service: service was not made in hand or at a place of abode, but at a “mail drop.”

Plaintiff’s Motion for Alternative Service, dated January 27, 2016: “[Plaintiff] cannot reasonably ascertain the location of Dodd and it appears Dodd is evading service ... by living out of an RV and staying in various locations”

Defendant Dodd’s lack of service does not preclude removal of the case by Defendants City of Biddeford and Beaupre. *See Morris v. Nuzzo*, 718 F.3d 660, 670 n. 3 (7th Cir. 2013) (removal not prevented by existence of a resident Defendant whom Plaintiff has not served);

Moreno v. Taos County Bd of Com'rs, 778 F. Supp. 2d 1139, 1142 (D.N.M. 2011) (denying remand where consent of non-served party was not required); *Hill v. Phillips, Barratt, Kaiser Eng'g.*, 586 F. Supp. 944, 945-46 (D. Me. 1984).

10. Thirty days have not yet expired since this action became removable to this Court namely, the service of Defendants City of Biddeford and Roger Beaupre, which occurred on January 21, 2016.

11. Copies of this Notice of Removal are being served this day on Plaintiff's counsel of record, pursuant to 28 U.S.C. § 1446(d).

12. Copies of this Notice of Removal are being served this day on the Clerk of the Maine Superior Court, York County, pursuant to 28 U.S.C. § 1446(d).

Wherefore, Defendants hereby give notice of the removal of this action from the Maine Superior Court, York County to the United States District Court for the District of Maine.

DATED at Portland, Maine this 2nd day of February, 2016.

/s/ Michael E. Saucier
Michael E. Saucier, Esq.
Attorney for Defendants Roger Beaupre
and City of Biddeford

THOMPSON & BOWIE, LLP
Three Canal Plaza
P. O. Box 4630
Portland, ME 04112
(207) 774-2500

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2016, I electronically filed Notice of Removal, with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

Walter McKee, Esq. McKee Billings, LLC, PA 133 State Street Augusta, ME 04330	John S. Whitman, Esq. Richardson Whitman Large & Badger PO Box 9545 Portland, ME 04112-9545
--	--

I hereby certify that a true copy of the above document was also served upon Attorney McKee, the attorney of record for the Plaintiff, and Attorney Whitman, attorney for Defendant Stephen Dodd, at their above address by regular mail, postage prepaid, on this date.

/s/ Michael E. Saucier
Michael E. Saucier, Esq.
Attorney for City Defendants

THOMPSON & BOWIE, LLP
Three Canal Plaza
P. O. Box 4630
Portland, ME 04112
(207) 774-2500